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1 in the Arizona Court of Appeals. Petitioner did not file his petition for review, however,
2 until September 15, 1995, more than 2 months outside the 30-day period. On April 17, 1996,
3 the Arizona Court of Appeals dismissed the petition for review as untimely.

4 Over 12 years later, on July 22, 2008, petitioner filed a second petition for post-
5 conviction relief in state court. On August 12, 2008, the PCR court dismissed the petition,
6 concluding that it was (1) precluded as untimely under Rule 32.4(a), Ariz. R. Crim. P.; (2)
7 precluded under Rule 32.2(a), Ariz. R. Crim. P., because the claims either were or could have
8 been raised on appeal or in his prior Rule 32 petition; and (3) the petition was not entitled to
9 an exception from preclusion under Rule 32.1(g), Ariz. R. Crim. P., because contrary to
10 petitioner's claim, State v. Donald, 198 Ariz. 406, 10 P.3d 1193 (Ct. App. 2000), was not a
11 significant change in the law.¹ The Arizona Court of Appeals denied petitioner's petition for
12 review on December 14, 2009, and the Arizona Supreme Court denied review on May 21,
13 2010. Petitioner filed the present petition for federal habeas review on January 13, 2011.

14 The Magistrate Judge recommends that we dismiss the writ of habeas corpus with
15 prejudice because it is time-barred under the Antiterrorism and Effective Death Penalty Act
16 (AEDPA) and no statutory or equitable tolling is available (doc. 14).

17 AEDPA imposes a one-year statute of limitations on federal petitions for writ of
18 habeas corpus filed by state prisoners. See 28 U.S.C. § 2244(d)(1). Section 2244(d)(1)(A)
19 provides that the 1-year limitations period runs from the latest of (1) "the date on which the
20 judgment became final by the conclusion of direct review," or (2) "the expiration of time for
21 seeking such review." The 1-year limitations period is tolled during the pendency of a
22 "properly filed application for State post-conviction or other collateral review with respect
23 to the pertinent judgment or claim." Id. § 2244(d)(2). A state petition that is not filed within
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26 ¹We reject petitioner's argument that the PCR court's dismissal of his 2008 petition
27 for post-conviction relief was based on "ambiguous and inconsistent grounds." Objections
28 at 3. Noting that the Court of Appeals issued its mandate on July 19, 1995, and citing Rule
32.4(a), Ariz. R. Crim. P., the PCR court held that the petition was "untimely." (Doc. 2, ex.
2). This ruling is clear, unequivocal and correct.

1 the state's required time limit is not "properly filed" and therefore does not support statutory
2 tolling. Pace v. DiGuglielmo, 544 U.S. 408, 413, 125 S. Ct. 1807, 1811-12 (2005).

3 We reject petitioner's specious argument that the phrases in 28 U.S.C. § 2244—"the
4 date on which the judgment became final" and "the pertinent judgment"—refer to the "state
5 judgment denying the PCR claims" rather than "the judgment of conviction." Objections at
6 6. Contrary to petitioner's argument, the term "judgment" in § 2244(d)(1)(A) "refers to the
7 judgment of conviction and sentence," and "direct review" is the "direct appellate review of
8 that judgment." Redd v. McGrath, 343 F.3d 1077, 1081 (9th Cir. 2003). Therefore, under
9 § 2244(d)(1)(A), a judgment becomes final when a judgment of conviction is rendered, the
10 availability of appeal exhausted, the United States Supreme Court denies a petition for
11 certiorari, affirms the conviction on the merits, or when the time for seeking certiorari
12 expires. See Hemmerle v. Schriro, 495 F.3d 1069, 1074 (9th Cir. 2007) (citing Clay v.
13 United States, 537 U.S. 522, 527, 123 S. Ct. 1072, 1076 (2003)). The Supreme Court has
14 expressly rejected the theory that would allow a state prisoner to "toll the [AEDPA] statute
15 of limitations at will simply by filing untimely state postconviction petitions." Pace, 544
16 U.S. at 413, 125 S. Ct. at 1812. "This would turn § 2244(d)(2) into a *de facto* extension
17 mechanism, quite contrary to the purpose of AEDPA, and open the door to abusive delay."
18 Id. "When a postconviction petition is untimely under state law, that is the end of the matter
19 for purposes of § 2244(d)(2)." Id. at 414, 125 S. Ct. at 1812 (quotation omitted)

20 Petitioner's conviction became final on direct appeal on September 21, 1995, when
21 the 90-period for seeking certiorari in the United States Supreme Court expired, which was
22 prior to the effective date of AEDPA. For petitioners whose convictions were final prior to
23 the enactment of the AEDPA, the statute's 1-year limitation period began to run on
24 AEDPA's effective date of April 24, 1996, and absent any form of tolling, expired on April
25 24, 1997. Patterson v. Stewart, 251 F.3d 1243, 1246 (9th Cir. 2001). Therefore, petitioner
26 had until April 24, 1997, to file his federal habeas petition. Petitioner did not file his pending
27 habeas petition until January 13, 2011, more than 13 years after the expiration of the one-
28 year deadline. Therefore, absent statutory or equitable tolling, the habeas petition is time-

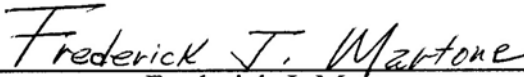
1 barred. When petitioner filed his second petition for state post-conviction relief on July 22,
2 2008, the federal limitations period had long-since expired, and no statutory tolling was
3 available. Petitioner's successive petition for post-conviction relief did not revive the already
4 expired limitations period.

5 The AEDPA statute of limitations is subject to equitable tolling where a petitioner can
6 show "(1) that he has been pursuing his rights diligently, and (2) that some extraordinary
7 circumstance stood in his way" and prevented him from filing a timely petition. Pace, 544
8 U.S. at 418, 125 S. Ct. at 1814. However, plaintiff has failed to assert any grounds for
9 equitable relief. Accordingly, petitioner is not entitled to equitable tolling and his habeas
10 petition is therefore time-barred under AEDPA.

11 **IT IS ORDERED ACCEPTING** the recommended decision of the Magistrate Judge
12 (doc. 14) and **DENYING AND DISMISSING** with prejudice the amended petition for writ
13 of habeas corpus (doc. 2).

14 **IT IS FURTHER ORDERED** denying a certificate of appealability and leave to
15 proceed *in forma pauperis* because the dismissal of the petition is justified by a plain
16 procedural bar and jurists of reason would not find the procedural ruling debatable. Indeed,
17 petitioner's contention is frivolous.

18 DATED this 16th day of December, 2011.

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 Frederick J. Martone
22 United States District Judge
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